

# EXHIBIT D

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM

-----X  
EDITH SHAW MARCUS and META SHAW STEVENS,  
as Temporary Administrators of the  
Estate of SAM SHAW,

Plaintiffs,

- against -

Index No.  
123783/94

MARTIN BRESSLER, LARRY SHAW,  
SUSAN SHAW, BRESSLER & BRESSLER,  
VALERIE GOODMAN, 1912 PRODUCTIONS,  
INC., MARC WEINSTEIN, individually  
and d/b/a COLOR GROUP,

Defendants.

-----X  
80 Centre Street  
New York, New York 10007  
June 5, 2002

B E F O R E:

HONORABLE MARTIN EVANS,  
Judicial Hearing Officer

A P P E A R A N C E S:

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BY: WILLIAM GREENWALT, ESQ.

-and-

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A P P E A R A N C E S: (Cont'd)

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-and-  
MICHAEL J. MARINO, ESQ.

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New York, New York 10016  
BY: JEFFREY RUBIN, ESQ.

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## AFTERNOON SESSION

MR. MARINO: It is hereby stipulated and agreed by and between the parties to the within action and their attorneys, all of which are present, that the above entitled action is hereby settled on the following terms and conditions:

Number 1. An entity will be formed. Whether that entity be a corporation, limited liability partnership, joint venture, what type of entity it will be will be determined by what is most reasonably efficient with respect to making money, tax consequences and the like.

The name of that entity will be the Shaw Family Archives. Whether it be Shaw Family Archives Inc., LLC, partnership, "Shaw Family Archives" will be the primary name.

Larry Shaw, Meta Shaw Stevens and Edith Shaw Marcus shall be principals in that entity and their respective interests in that entity will be the following: Larry Shaw shall own 50 percent of that entity. Meta Shaw Stevens and Edith Shaw Marcus -- off the record.

(Discussion held off the record.)

MR. MARINO: Meta Shaw Stevens shall own 25 percent of that entity and Edith Shaw Marcus shall own

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25 percent of that entity.

That entity shall own and take possession of, in a manner set forth below, all of the photographs involved in this litigation. That includes --

MR. RUBIN: Off the record.

(Discussion held off the record.)

MR. MARINO: That includes each and every photograph shot by either Sam Shaw or Larry Shaw during the course of their respective careers, lifetimes --

JHO EVANS: Excuse me. Wait a minute.

There were some photographs that were claimed by both Sam and Larry Shaw, but Sam Shaw's attorneys weren't aware they were taken by her but owned by Columbia pictures. If you want to dispose of those photographs, they're not a party to it.

MR. MARINO: Your Honor, I don't think we can dispose of them via stipulation.

JHO EVANS: From the point of view of the stipulation you can.

(Discussion held off the record.)

MR. MARINO: The photographs included in the collection to be owned by the Shaw family foundation entity include -- Shaw Family Archives entity include

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all of those photographs now in the possession -- I can't do that either.

(Discussion held off the record.)

MR. MARINO: (Continuing) All of the photographs taken -- snapped by Sam Shaw and/or Larry Shaw during the course of their lifetimes, together with those photographs taken by third parties which either of them claim as being owned by them via some gift or sale from a third party, all subject to claims by said third parties.

There shall be appointed what we have termed a "superagent." The superagent shall have two roles: number one, the primary role shall be the custodian of all the photographs hereinbefore mentioned. However, it is in the interest of all the parties to keep that group of photographs within the possession of the superagent at a minimum in order to save costs.

Let me go back for a minute. The primary or one of the roles of the super agent shall be to warehouse and maintain all of the photographs subject to a reduction in that collection pursuant to the agreement of the principals: Larry, Meta and Edith.

The second role for the super agent is to determine the commercial reasonableness of each and every deal brought to the Shaw Family Archive entity.

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Each and every deal brought to the Shaw Family entity upon which there is not agreement between Larry, Edith and Meta, and with respect to that their votes are 50 percent Larry, and 50 percent total for Edith and Meta, 25 percent each.

In the event of a deadlock, 50/50 deadlock, the super agent will determine whether or not a deal shall go forward depending on its commercial reasonableness. The respective voting power is 50 percent Larry, no matter what the entity; 25 percent Edith, 25 percent Meta.

Let me try to back up. With respect to all types of transactions other than outright sales of photographs, the procedure is as follows: If the parties agree either to do or to not do the transaction, the super agent need not be involved.

If, however, there is a deadlock on whether or not to do the transaction the transaction must go to the super agent who will determine whether or not it is commercially reasonable to do and his determination shall be final.

However, with respect to the outright sale of an image, photograph -- if with respect to the outright sale of a photograph, negative or transparency, photographic print, negative or

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transparency, again, if the parties -- withdraw that.

If any of the parties wishes not to do the transaction and even if it is a minority position, then -- withdrawn. That's not right.

MR. RUBIN: Keep going.

MR. MARINO: If it is a minority position, and the super agent makes the determination that the deal is commercially reasonable, the party, either Larry, Edith or Meta, dissenting, or parties, will have the right of first refusal to make that deal.

JHO EVANS: Off the record.

(Discussion held off the record.)

MR. MARINO: Let's back up a little bit.  
In the event --

MR. RUBIN: Off the record.

(Discussion held off the record.)

MR. MARINO: Let me back up.

With respect to an outright sale as previously stated, if any of the parties -- with respect to the outright sale of a photographic print, negative or transparency, if any of the parties -- let me continue.

With respect to the outright sale of a photographic print, negative or transparency or contact sheet, which is a print, in the event of

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unanimity between the parties, the deal shall go forward.

In the event that there is a majority in favor of the deal, the dissenting party may nonetheless match the deal presented within five days, and if said deal is not matched by this dissenting party within said five-day period the deal shall go forward.

In the event there is a deadlock that the decision as to whether or not to go forward with that transaction shall be in the hands of the super agent, and if the super agent makes the determination that the deal should go forward because it is commercially reasonable, then any of the dissenting parties to that deal among the principals shall have the right, within five days after the super agent makes determination, to go forward to match the deal. If they cannot match the deal within that said five-day period the deal goes forward.

Now, all of the principals, Larry, Edith and Meta, may act as subagents for the collection, and they shall be compensated by the entity for each deal that is brought to the super agent -- excuse me -- each deal that is brought to the entity via the super agent in an amount which is commercially reasonable

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given industry standards.

To clarify, they shall be compensated an agency commission in an amount which is reasonable in accordance with industry standards for all deals brought and consummated. Said compensation upon consummation shall only be paid in the event money is received with respect to that transaction by the entity.

With respect to any monies coming in, any monies generated by the collection as described previously, all monies shall be paid directly to the entity, and any commissions or expenses as will be laid out below will all be paid by the entity after receipt of said -- off the record.

(Discussion held off the record.)

MR. MARINO: In the event any income generated by the collection is payable to anyone other -- any one or any entity other than the Shaw Family Archives, the person or entity receiving that check or money or cash shall immediately endorse it over and deliver it to the super agent on behalf of the Shaw Family Archives.

The commission paid to the subagent shall be a percentage based on the gross amount generated and collected in connection with the transaction, and such

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2 commissions shall be paid by the entity to the agent  
3 after said generated money is deposited and cleared in  
4 the entity bank account.

5 All expenses incurred by agents, whether  
6 they be Larry, Meta or Edith, or any other outside  
7 agents shall be borne by the agent as the agent's cost  
8 of doing business.

9 However, in the event either Larry, Meta or  
10 Edith, or any other outside agent request that certain  
11 expenses be borne by the entity because of  
12 extraordinary circumstances, then if Meta, Larry and  
13 Edith agree they will be borne by the entity. If  
14 there is a deadlock -- withdrawn.

15 A majority of the parties may agree to have  
16 the entity bear such expenses, or a majority of the  
17 parties may agree that the expenses should not be  
18 borne by the entity. In the event of a deadlock, the  
19 super agent will determine the expenses sought to be  
20 borne by the entity using a commercially reasonable  
21 standard.

22 Any such expenses advanced by a subagent  
23 without the prior written approval of the entity --  
24 forget that. Forget that. It's assumed.

25 The parties herein, Larry, Meta and Edith,  
26 shall each be entitled to a percentage of the net

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2 proceeds of all income-generating transactions after  
3 the payment of all reasonable and necessary expenses,  
4 which shall include the agency commission, if any,  
5 subagency commission, if any, and after the payment of  
6 all expenses reasonable and necessary to house and  
7 maintain the collection, including any and all fees,  
8 reasonable and necessary fees paid to the super  
9 agent.

10 JHO EVANS: Off the record.

11 (Discussion held off the record.)

12 MR. MARINO: Just by way of example only,  
13 expenses shall include the super agent's fee, the cost  
14 of housing and maintaining the collection -- by  
15 "maintaining," I mean kept boxes, glassine envelopes,  
16 folders, maintain -- but it shall also include the  
17 administration of the entity's business affairs and  
18 shall also include the scanning and inventorying of  
19 all the images in the collection.

20 The net proceeds after the deduction of the  
21 aforementioned expenses shall be split in the  
22 following manner: 50 percent to Larry Shaw, 25 percent  
23 to Meta Shaw Stevens, 25 percent to Edith Shaw  
24 Marcus.

25 JHO EVANS: Off the record.

26 (Discussion held off the record.)

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2 MR. MARINO: Any reference herein to the  
3 principals' ownership of a share in the entity -- I  
4 said that wrong. The principals of the entity shall  
5 herein -- the next subject.

6 The parties, each of them individually,  
7 Larry Shaw, Meta Shaw Stevens Edith Shaw Marcus  
8 individually, indemnify and hold the other harmless,  
9 including the entity, for any and all claims, losses  
10 or liabilities incurred by any of the parties or the  
11 entity.

12 Each of the individual parties agrees to  
13 indemnify and hold harmless --

14 MR. RUBIN: Each of the principals of the  
15 entity agree to indemnify and hold harmless the entity  
16 and each other from any claims made against them for  
17 any transaction that they conducted in relation to the  
18 subject of the entity prior to this date.

19 JHO EVANS: Can you tell me what it is  
20 you're referring to?

21 MR. RUBIN: What we're referring to is in  
22 the event one of the parties had done a transaction --  
23 off the record.

24 (Discussion held off the record.)

25 MR. RUBIN: From any claims including any  
26 lawsuits, including but not limited to any lawsuits

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2 which are made against any of the principals for any  
3 transaction conducted by such principals or their  
4 agents, each respective principal or their agents in  
5 relation to the corpus of the entity.

6 JHO EVANS: I take it that what you're  
7 referring to is if any claims are made against this  
8 proposed entity, whatever it is, corporation or LLC,  
9 by an third person arising out of any activities that  
10 any of these three individuals who are  
11 before today, those individuals will  
12 harmless and indemnify the entity  
13 arising out of those claims. Is

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Proceedings

1  
2 MR. MARINO: And I am saying it has to be  
3 authorized agents.

4 MR. RUBIN: Our problem is Darius, where  
5 there is a claim by Larry that he is acting without  
6 authority.

7 JHO EVANS: What you're saying is if he  
8 makes any claim against the entity, Larry Shaw will  
9 hold the entity harmless against them. Is that  
10 right?

11 MR. RUBIN: That's what it should be. We  
12 didn't have any dealings with them.

13 JHO EVANS: Is that true?

14 MR. MARINO: That's what they are  
15 suggesting. All I'm saying is that the agent be an  
16 authorized agent in order for the indemnity to take  
17 effect, and then the issue of whether it was  
18 authorized or not is --

19 MR. RUDES: Just a second on that.

20 JHO EVANS: If this fellow was not an  
21 authorized agent and he makes some claim again the  
22 entity, even though he was unauthorized, and suppose  
23 somebody is from Australia and says they were  
24 authorized by Meta Stevens to sell these photographs  
25 and he wasn't, should there be an indemnity by Meta  
26 Stevens against the entity?

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2016

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## Proceedings

1  
2 MR. RUBIN: No. Our problem is with Darius  
3 specifically because Darius was doing business with  
4 Larry, and if Darius had done -- if Darius had done  
5 business with another person, and that person comes  
6 against the entity claiming that there was some  
7 problem in the sale, we shouldn't have to pay for the  
8 defense of that.

9 JHO-EVANS: I fail to see how any person can  
10 make a claim against an entity arising out of a past  
11 action if the entity has not been in existence.

12 MR. GREENAWALT: Not just against the  
13 entity. The way Mr. Marino put it, it's also claims  
14 against any one of the principals or their acts for  
15 any of those transactions.

16 JHO EVANS: Is there a possibility that  
17 Darius will make claims against Stevens and Marcus?

18 MR. RUBIN: I don't know. There was a  
19 contract that he signed with the receiver. I have no  
20 idea -- I haven't seen the contract -- I have no idea  
21 who is responsible for that.

22 MR. TUNICK: The receiver, he signed the  
23 deal, he's responsible for it.

24 MR. RUBIN: The receiver signs in his  
25 representative capacity.

26 MR. GREENAWALT: Darius and the receiver

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Proceedings

1  
2 signed a contract.

3 JHO EVANS: But he was authorized to do so,  
4 wasn't he? If he was authorized to sign a contract  
5 and based on that contract, that's an authorized  
6 contract.

7 MR GREENAWALT: Darius is only supposed to  
8 do certain things under the contract.

9 JHO EVANS: I don't know, if there's a claim  
10 based on the contract that should be indemnified.

11 MR. GREENAWALT: If somebody claims against  
12 Darius outside of the contract or claims against Larry  
13 or Meta, claims against them for acts up to now,  
14 that's what we're trying to get into the indemnity.

15 MR. TUNICK: Authorized agent.

16 JHO EVANS: You want the entity indemnified  
17 for claims against Larry.

18 MR GREENAWALT: By a third person.

19 JHO EVANS: I don't understand that but --

20 MR GREENAWALT: If somebody claims Larry has  
21 done something strange and Larry owes somebody a  
22 hundred thousand dollars for some reason, okay --

23 MR. RUDES: Not "for some reason," for work  
24 he did on behalf of marketing the photos.

25 JHO EVANS: That's not a claim against the  
26 entity.

DEBRA SALZMAN, RMR, Official Court Reporter

Proceedings

MR GREENAWALT: The point is --

JHO EVANS: How can that be a claim against the entity?

MR. MARINO: This indemnity makes no sense. This indemnity makes no sense.

JHO EVANS: It doesn't make any sense.

MR. MARINO: The indemnity makes no sense at all.

JHO EVANS: That doesn't make any sense.

MR. RUBIN: Judge, there's another issue that there is a claim --

JHO EVANS: You're forming a corporation. Somebody is making a claim against Larry for past acts. How is the corporation involved?

MR. MARINO: The extent of the claim can only be against Larry and Larry's interest in the entity.

MR. RUBIN: Here is the problem. The problem is that there is an issue that some pictures which Larry has are also claimed by another party, a photographer as being his. If those become the subject of --

JHO EVANS: Wait a minute. Tell me that again. Some third party makes a claim against what?

MR. RUBIN: Larry has claimed that certain

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## Proceedings

1  
2 pictures are authored by himself. There is another  
3 photographer that made a claim that those pictures are  
4 not Larry's but his. Those then, however, will become  
5 part of this entity and will be marketed as part of  
6 the entity.

7 If that person, that photographer, sues the  
8 entity in claiming that those pictures are his not  
9 Larry's, we want Larry to defend it.

10 MR. MARINO: There are a similar amount of  
11 photographs on the other end.

12 JHO EVANS: We know that there are claims by  
13 third parties.

14 MR. TONICK: We already said that.

15 MR. RUBIN: Who pays for the defense of the  
16 lawsuit?

17 JHO EVANS: We know there are claims by  
18 third parties against some of these photographs. Some  
19 of these photographs were claimed by Larry Shaw and  
20 also claimed by Sam Shaw. Now, if this third party  
21 comes in against the corporation and says those are  
22 mine, who is going to indemnify the corporation?

23 MR. RUBIN: I'm saying there are certain  
24 pictures that Larry claims were taken. There is a  
25 pictures taken by Atami (phonetic) that he took. If  
26 in fact there is a lawsuit, Larry makes these part of

DEBRA SALZMAN, RMR, Official Court Reporter

Proceedings

1  
2 the corpus of the entity; if this person comes in and  
3 brings a lawsuit, who pays for --

4 MR. TUNICK: Don't take them as part of the  
5 corpus.

6 MR. MARINO: Turn them over.

7 MR. TUNICK: Don't take them.

8 MR. RUBIN: That's not the point.

9 MR. TUNICK: Came them back to Atami.

10 JHO EVANS: Is there any likelihood of that  
11 happening?

12 MR GREENAWALT: Well, your Honor, I think  
13 two of the groups you were referring to, Maureen  
14 Lambrey and Jessica Burstein, Jessica says so far as  
15 she's concerned Sam, she feels, could have those.

16 JHO EVANS: I don't care. She testified  
17 that she took them and the ownership of them is in  
18 Columbia Pictures. That's what she testified to.  
19 What kind of a claim can she make? She doesn't own  
20 the photographs.

21 MR GREENAWALT: I understand.

22 I suppose Columbia could make a claim, your  
23 Honor.

24 JHO EVANS: Don't look for something that  
25 doesn't exist.

26 MR. RUBIN: The women are concerned about

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Proceedings

1  
2 being responsible or being responsible for something  
3 that was done previously which may be wrong or have  
4 some consequences against them and the entity, that's  
5 all, so they just want to be held harmless for that  
6 because they don't know what Larry was doing and  
7 they're willing to do it reciprocally.

8 MR. RUDES: Each party here represents that  
9 they have done nothing in any way which would expose  
10 the individual or the entity to anymore suits or any  
11 other suits or any attempts to recover in any fashion,  
12 and they acknowledge that in entering into this  
13 agreement they have been relying on the  
14 representations and warranties.

15 MR. MARINO: That's fine. I'm happy with  
16 that.

17 JHO EVANS: What more do you need? That's  
18 all you need.

19 Both sides agree to that?

20 MR. MARINO: Yes, we're fine, Judge.

21 MR. GREENAWALT: Just a minute.

22 JHO EVANS: Next point.

23 MR. MARINO: Now we move on to attribution.

24 All of the photographs involved in this  
25 collection shall be the property -- shall be termed a  
26 part of the Shaw Family Archives.

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0022

21

Proceedings

1  
2 With respect to the individual authorship of  
3 an individual image, all of the Marilyn Monroes will  
4 be -- I was about to state that all of the Marilyn  
5 Monroes can be attributed to Sam Shaw, except that my  
6 client just raised 72 photographs or 36 photographs --  
7 are they printed or negatives?

8 (Discussion held off the record.)

9 MR. MARINO: The parties have agreed that  
10 the attribution of the photographs involved in this  
11 collection will be determined by Judge Evans based on  
12 his findings, which will be based in turn on the  
13 evidence adduced at trial over the past seven years.

14 MR. GREENAWALT: I'm not willing to let  
15 Marilyn Monroe be attributed to Larry Shaw.

16 MR. MARINO: Let me tell you, since we  
17 didn't present any evidence on that during seven  
18 years --

19 MR. GREENAWALT: No, no, no.

20 MR. RUBIN: Hold it. I don't know what the  
21 problem is. I thought we agreed.

22 MR. MARINO: We did agree.

23 MR. TUNICK: Larry tells us two rolls are  
24 Larry Shaw's photographs of Marilyn Monroe. If we can  
25 agree that all Marilyn Monroe photographs can be  
26 attributed to Sam Shaw except for a certain two rolls,

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## Proceedings

Judge Evans based on the evidence adduced in this case over the past seven years.

In the event any of the parties, Larry, Meta or Edith, have marketed any photograph outside of the parameters, a photograph, any image, any transparency of any kind, have marketed any of those images outside the parameters of this agreement, then that party shall be penalized in the following manner -- start again.

In the event any of the parties herein from this date forward, June 5, 2002, market, commercialize, attempt to sell, attempt to make any type of deal with respect to an image involved in this transaction --

JHO EVANS: What about gifts?

MR. MARINO: Gifts are included, if they attempt to gift -- off the record.

(Discussion held off the record.)

MR. MARINO: (Continuing) Including gifts, without the agreement of the other parties -- excuse me -- without the majority agreement of the other parties, then that person shall be penalized in the following manner: they will be subject to treble damages in the event monies are received. In the event of a gift they will be subject to treble damages

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on the value of the damages, on the value of the photograph plus \$10,000.

Off the record.

(Discussion held off the record.)

MR. LARRY SHAW: I will not agree on that.

MR. TUNICK: Strike that.

(Discussion held off the record.)

MR. MARINO: No \$10,000, just treble damages.

In the event any of the parties market, commercially exploit, sell or even gift one of the images that should be a part of this collection but has not been previously -- but has not been turned over pursuant to this stipulation, that party will be penalized in the following manner: they will be subject to treble damages and they will be penalized, in addition be penalized in the amount of \$10,000 per occurrence.

MR. TUNICK: Also the value --

MR. GREENAWALT: Also you don't have to --

MR. TUNICK: After discovered photographs, images, transparencies, whatever was listed, turned in by any principal to the super agent, any ones turned in after this date, any photographs turned in -- any photographs after discovered -- how about after

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discovered photographs? I'm giving everybody the benefit of the doubt.

MR. LARRY SHAW: After recovered.

MR. MARINO: After discovered or after recovered photographs, beautiful.

MR. RUDES: Very good.

MR. TUNICK: (Continuing) Turned over to the super agent or the entity shall not be subject to the aforementioned penalties.

MR. MARINO: Fine. Okay.

MR. RUDES: One thing clarified, Madam Reporter. At the outset when Mr. Marino made reference to images and all that stuff, could you put "collectively known as photographs" so we don't have to worry about anything cropping up if he left out a word.

COURT REPORTER: Your statement is now on the record.

MR. MARINO: In the event of any dispute arising out of the terms and conditions of this stipulation, said dispute shall be --

MR. RUDES: No arbitration, Leave it out.

MR. MARINO: Judge, can you help us out here? All the parties agree, I think, that Myron Baldock is an appropriate super agent.

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However, we are unclear on how to deal with whether -- how he gets fired or how he gets renewed. In the event of a deadlock there's no super agent to make a determination.

MR. TUNICK: That's the last point we had.

MR. RUDES: Go back to court and get a new receiver.

MR. GREENAWALT: Your Honor, let me explain some of the reason for this. There are many people who would love to have some control of this collection, who are experts in this field, who we are -- we've been told on good source would really market this collection tremendously. Myron Beldock is a fine guy but he's a very, very busy lawyer.

JHO EVANS: In that case, use your people as subagents.

MR. GREENAWALT: We want to have some provisions for maybe cutting down the cost of the super agent's administration, such as having True Color --

JHO EVANS: What you're saying is you want somebody else as a super agent?

MR. GREENAWALT: At some period.

JHO EVANS: Is that what you're saying?

MR. GREENAWALT: We would like somebody else

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1  
2 now. We are acceding to Beldock for the time being,  
3 but we want to have another way to get another  
4 superagent, or if True Color can take it over, the  
5 pictures --

6 MR. MARINO: I'm sorry.

7 (Discussion held off the record.)

8 JHO EVANS: You have agreed on everything  
9 now except whether Beldock will continue in some way.  
10 Everything else is agreed?

11 MR. TUNICK: Yes.

12 MR. MARINO: Yes.

13 JHO EVANS: Everything agreed except the  
14 question of what happens if you don't like Beldock.

15 MR. RUBIN: Right.

16 MR. GREENAWALT: We have one more thing.

17 JHO EVANS: Is everything else agreed except  
18 that?

19 MR. RUBIN: The only other issue is what  
20 lab, the place of storage. Right now it's my  
21 understanding that these are stored at True Color  
22 Laboratories.

23 MR. LARRY SHAW: A portion are stored there.

24 MR. RUBIN: A portion stored there and a  
25 portion stored at Edie's house.

26 Is that true?

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MS. SHAW MARCUS: Yes.

MR. RUBIN: Is there a problem if you put all the photos at True Color?

MR. MARINO: The problem is the expense; it seems to me a waste of money.

(Discussion held off the record.)

MR. MARINO: Let's do that. To start, at some point get together and determine --

MR. TUNICK: Just so they're in one place.

MR. RUDES: We're going to store them all at True Color and then decide what they're going to do?

MR. MARINO: They can be scanned at True Color.

MR. TUNICK: They're going to be stored at True Color Lab. All photos have to be delivered to True Color Lab.

JHO EVANS: Let's say this. If two-thirds of the parties agree --

MR. TUNICK: That this is a deal --

JHO EVANS: -- that any photograph can be taken out and given to any one of the parties, that will be done.

MR. MARINO: I'm happy with that.

MR. RUDES: There's a problem now about family photos that are in bins, which they say have to

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